IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4544 OF 2006

Vasant Narayanrao Yadav. ...Petitioner.
Vs.
Madhukar Kashinath Chipkar & Ors. ...Respondents.
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Mr. Hutoxi Tavadia with Mr. H.V. Kode for the Petitioner.
Mr. N. V. Walawalkar, with Mr. G.S. Godbole and Mr. G.H. Keluskar for Respondent Nos.1 and 2.
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CORAM : DR.D.Y.CHANDRACHUD, J.

July 17, 2006.

P.C.

A decree for eviction has been passed on the ground that (i) The landlord needs the premises reasonably and bona fide for his own use and occupation; (ii) The tenant has acquired suitable alternative accommodation; (iii) The premises had not been used for the purpose for which they were let for a continuous period of six months prior to the institution of the suit; and (iv) The user of the premises has been changed from residential to commercial.

2. Now in so far as the ground of the Petitioner having

acquired suitable alternate accommodation is concerned, the Petitioner admitted in the course of his evidence that in 1984 he purchased residential accommodation at CBD Belapur. Those premises consist of one bed room, a hall and a kitchen and admeasure 400 sq.ft. The suit was instituted in 1985. The Petitioner was an employee in BARC and was at the material time, residing in service accommodation. In the course of his evidence, the Petitioner admitted that the flat at Belapur was transferred by him to the name of his son in 1994, after the suit was instituted. The Petitioner, in the course of his deposition, specifically admitted that he lived together with his sons Ranjit and Rajiv who contribute towards the expenses of the family which lives together. In view of the evidence which has come on the record, the decree which has been passed on the ground of the Petitioner having acquired suitable alternate accommodation, cannot be faulted.

3. In so far as the bona fide requirement of the First Respondent, the landlord, is concerned, it is not disputed before the Court that the First Respondent is 80 years of age and the litigation has continued since 1985. The Trial Judge formed the view that the requirement of the First Respondent who would stay

alone in the suit premises was not bona fide. The Trial Judge was of the view that the First Respondent can reside with his son who lives in another residential tenement in the same building or with his married daughter who stays at Andheri. The approach of the Trial Judge was manifestly erroneous and flawed. The landlord cannot be compelled to meet his need for accommodation however reasonable and bona fide, by requiring him to stay with a son or a married daughter. A landlord – and as in this case, even an aged one – is entitled to live in dignity. The compulsion for the aged to live alone is an unfortunate circumstance of modern life. The landlord's decision to reside alone and not be dependent on his adult children is not to be ignored but respected, so long as the case is bona fide. The Appellate Court was, in these circumstances, justified in reversing the view taken by the Trial Judge.

4. Counsel appearing on behalf of the Petitioner, however, submitted that the landlord has certain additional premises which had come to his occupation. The Appellate Court noted in para 27 of the judgment that Block No.6 in the same building was the subject matter of litigation in the City Civil Court in which the Court

Receiver was appointed Receiver and the First Respondent landlord was appointed as agent of the Receiver. The Appellate Bench, therefore, held that unless that suit was concluded and was decided in favour of the landlord, the said premises could not be said to be available to the landlord as a matter of right. Counsel appearing on behalf of the Petitioner states that the suit before the City Civil Court was dismissed for want of prosecution on 14th February 2005 and the litigation has ended. However, the attention of the Court was drawn by Counsel for the First Respondent to an order dated 11th August 1999 passed by a Learned Single Judge of this Court in Notice of Motion No.1368 of 1999 in Suit No.2539 of 1999, (**Madhukar K.Chipkar vs. Smt. Parvatibai Lad**) in which the Court Receiver was appointed as Receiver of the premises comprising of Block No.6 and the First Respondent was appointed as the agent of the Receiver. The suit was instituted on the Original Side of this Court The order of the Learned Single Judge dated 11th August 1999 has not been modified subsequently. In any event, no variation or modification of the aforesaid order has been brought to the notice of this Court. In these circumstances, the property comprising of Block No.6 continues to be *custodia legis* and the order of the Appellate Bench

cannot be regarded as taking a view that is perverse or such that would warrant interference under the supervisory jurisdiction under Article 227 of the Constitution. The Appellate Bench was justified, in my view, in interfering with the judgment of the Trial Judge on the point of bona fide requirement which is founded on a manifestly incorrect premise viz., that the landlord should meet his requirement by either residing with his son or married daughter. The need of the Respondent has been held to be reasonable and bona fide. In so far as the question of comparative hardship is concerned, the Court must weigh the circumstance that the Petitioner acquired alternate accommodation in the year 1984. He thereafter, transferred the same in the name of his son. The question of comparative hardship therefore, weights in favour of the First Respondent.

5. Finally it must be noted that the Appellate Bench has confirmed the decree on the ground that the premises were not used for the purpose for which they were let for a of continuous period of six months immediately preceding the date of the suit. Undoubtedly, when the premises are let out for residential purposes, so long as the dominant user continues to be

residential, there would be no breach of the conditions of tenancy. In the present case, however, the facts are different. It is accepted before this Court by Counsel appearing on behalf of the Petitioner as it has been admitted in the Courts below that the premises were let out for residential purposes. The judgment of the Trial Court takes due notice of the fact that six strangers were residing in the premises wherein the mother of the petitioner who was then 70 years of age also resided. A certified copy of the electoral roll was duly produced in evidence to establish this fact. A suggestion was put to the First Respondent in the course of the cross examination that these six persons were related to the tenant. However, no such case could be established and Counsel appearing on behalf of the Petitioner fairly accepts the position that the defence that these six persons were related to the Petitioner has not been established. The concurrent finding of both the Courts is that the mother of the Petitioner who resided in the flat in the absence of the Petitioner who was residing at his service accommodation, allowed the premises to be used by boarders and lodgers. This concurrent finding does not warrant interference under Article 227 of the Constitution.

6. In these circumstances, no case for interference is made out. The petition is dismissed. However, on the oral request of Counsel appearing on behalf of the Petitioner, there shall be a direction that the decree for eviction shall not be executed for a period of eight weeks from today. This would be subject to the filing of the usual undertaking of the Petitioner and of all the adult members in the family. Undertaking to be filed within two weeks from today.

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